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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,389	11/20/2003	Jeffery J. Wright	03269.0032U1	2578
23859	7590	09/22/2006	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915				JUSKA, CHERYL ANN
ART UNIT		PAPER NUMBER		
				1771

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/719,389	WRIGHT, JEFFERY J.
	<b>Examiner</b>	<b>Art Unit</b>
	Cheryl Juska	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 9-20 and 31-52 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 21-30, 53, and 54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed June 27, 2006, has been entered. Claims 1, 3, 5, 8, 21, 25, 27, and 30 have been amended as requested. New claims 53 and 54 have been added. Thus, the pending claims are 1-54 with claims 9-20 and 31-52 being withdrawn as non-elected.
2. Applicant's amendment is sufficient to withdraw the 102 rejection of claims 1-8 by Kjellqvist as set forth in section 4 of the last Office Action. Specifically, applicant has amended independent claims 1 and 21 with the limitation that the polymer component comprises at least 80% by weight of one homogeneously branched ethylene polymer (HBEP).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 USC 103(a) as being obvious over US 6,187,424 issued to Kjellqvist et al.

Said claims were previously rejected under 102. As noted above, applicant's amendment limiting the polymer component to being at least 80% by weight of HBEP is sufficient to withdraw the anticipation rejection. However, said claims are deemed obvious over the cited reference. As discussed by applicant , one can conclude from the teachings of the reference that

the polymer mixture cannot comprise any more than 75% of any one polymer A, B, or C (Amendment, page 11, 1<sup>st</sup> paragraph). However, absent a showing of criticality for the claimed range, the present claims are obvious over the prior art. *In re Woodruff*, 16 USPQ2d 1934 states, “The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims....In such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range.” Additionally, *In re Geisler*, 43 USPQ2d 1362 held that a statement in the prior art that the thickness of a protective layer “should not be less than about 100 Angstroms” was insufficient to teach away from a thickness of less than 100 Angstroms, as claimed by the applicant. Additionally, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 227 USPQ 773 held as proper a rejection of a claim directed to an alloy of “having 0.8% nickel, 0.3% molybdenum, up to 0.1% iron, balance titanium” as obvious over a reference disclosing alloys of 0.75% nickel, 0.25% molybdenum, balance titanium and 0.94% nickel, 0.31% molybdenum, balance titanium. Thus, the present claims of at least 80% HBEP are deemed to be obvious over the prior art teaching of 75% percent HBEP in that one skilled in the art would presume the properties of the two compositions to be the same. The burden is upon applicant to establish otherwise (i.e., show criticality for the range claimed). Therefore, claims 1-8 are rejected as being obvious over the prior art.

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5. Claims 21-30 stand rejected under 35 USC 103(a) as being unpatentable over the cited Kjellqvist reference as set forth in section 6 of the last Office Action.

6. New claims 53 and 54 are rejected 35 USC 103(a) as being unpatentable over the cited Kjellqvist reference.

Said claims are also rejected since the reference teaches polymer A (i.e., HBEP) has a density preferably less than or equal to 0.920 g/cc and preferably at least about 0.855 g/cc. Therefore, claims 53 and 54 are also rejected as being obvious over the cited prior art.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

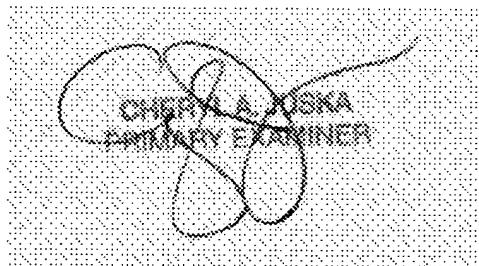
8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cj  
September 18, 2006